

GAHC010018522023



THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : I.A.(Civil)/227/2023

SRI ARUPJYOTI BORTHAKUR
ADDL. CHIEF ENGINEER, LOWER ASSAM ZONE, WATER RESOURCES
DEPTT., CHANDMARI, GHY-03, ASSAM

VERSUS

THE STATE OF ASSAM AND 7 ORS
REP. BY THE CHIEF SECRETARY TO THE GOVT. OF ASSAM, DISPUR, GHY-
06 (ASSAM)

2:THE PRINCIPAL SECRETARY TO THE GOVT. OF ASSAM
PERSONNEL (B) DEPTT.
SECRETARIAT
DISPUR
GHY-06 (ASSAM)

3:THE ADDL. CHIEF SECRETARY TO THE GOVT. OF ASSAM
DEPTT. FOR THE WELFARE OF PLAIN TRIBES AND BACKWARD CLASSES
(WPT AND BC)
DISPUR
GHY-06 (ASSAM)

4:THE SECRETARY TO THE GOVT. OF ASSAM
PERSONNEL (B) DEPTT.
SECRETARIAT
DISPUR
GHY-06

5:THE ADDL. CHIEF SECRETARY TO THE GOVT. OF ASSAM
WATER RESOURCES DEPTT.
DISPUR
GHY-06 (ASSAM)

6:SECRETARY TO THE GOVT. OF ASSAM
WATER RESOURCES DEPTT.
DISPUR
GHY-06 (ASSAM)

7:SRI PALASHJYOTI GOSWAMI
ADDL. CHIEF ENGINEER
UPPER ASSAM ZONE
WATER RESOURCES DEPTT.
DIBRUGARH- 786005
ASSAM

8:PRANAB KUMAR TURUNG

S/O- LT. LECHAM TURUNG
PRESENTLY WORKING IN THE POST OF ADDITIONAL CHIEF ENGINEER
WATER RESOURCES DEPTT.
CACHAR AND HILLS
SILCHAR
R/O- NO.1
GANDHAKOROI GAON
P.O. AND P.S. SARUPATHAR
DIST.- GOLAGHAT
PIN- 785601
ASSA

Advocate for the Petitioner : MR. S K GOSWAMI

Advocate for the Respondent : MR D K DAS

Linked Case : WP(C)/405/2023

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Advocate for : MR D K DAS
Advocate for : GA
ASSAM appearing for THE STATE OF ASSAM AND 7 ORS

**BEFORE
HONOURABLE MR. JUSTICE SUMAN SHYAM**

ORDER

Date : 27/01/2023

Heard Mr. S. K. Goswami, learned counsel for the applicant. Also heard Mr. D. Mazumdar, learned Additional Advocate General, Assam, assisted by Mr. R.M. Das, learned counsel appearing for the opposite party nos. 1, 2, 4, 5 & 6. Mr. R. Dhar, learned Standing Counsel, WPT & BC Department, Assam, has appeared on behalf of the opposite party no.3 and Mr. D.K. Das, learned counsel is present on behalf of the respondent no. 8 (Writ Petitioner).

This IA has been filed by the applicant Arupjyoti Borthakur with a prayer to vacate the interim order dated 25/01/2023 passed by this Court in WP(C) 405/2023 whereby, the official respondents were restrained from issuing any final order of promotion in respect of the post of Chief Engineer in the department of Water Resources, Government of Assam, until the next date fixed i.e. 01/02/2023.

The basic grievance of the writ petitioner was to the effect that acting on an Office Memorandum dated 18/01/2023 issued by the Government of Assam, in the Department of Personnel, his seniority position has been abruptly downgraded, thereby, taking him out of the purview of the zone of consideration for promotion to the post of Chief Engineer. Since, the petitioner is holding the post of Additional Chief Engineer (Civil) in the department of Water Resources, hence, according to the petitioner's counsel, his client was entitled to be considered for promotion to the post of Chief Engineer, Water Resources. It was on the basis of such submission of the petitioner's counsel and by taking note of the request of the learned departmental counsel seeking time to obtain instruction, this Court had passed the interim order on 25/01/2023.

By filing this IA, the applicant has urged that the DPC had met on 25/01/2023 under the Chairmanship of the Chief Secretary to the Government of Assam and considered the candidature of as many as 3 (three) Officers of the rank of Additional Chief Engineer i.e. the writ petitioner, the applicant herein and the opposite party no. 7.

Mr. S.K. Goswami, learned counsel for the applicant submits that since the criteria for

promotion is "merit" and considering the fact that all the three candidates including the writ petitioner have been considered for promotion, there is no justifiable ground for this Court to continue with the interim order at this stage. The learned counsel for the applicant has prayed for vacation of the interim order by further contending that this client is due for retirement on attaining the age of superannuation with effect from 31/01/2023 and, therefore, if the interim order is not vacated, irreparable injury will be caused to the applicant in the event he emerges as the selected candidate on merit.

Mr. D. Mazumdar, learned Additional Advocate General, Assam, has also supported the contention of the applicant's counsel and has confirmed that all the three candidates including the applicant and the writ petitioner have been considered by the DPC and that the criteria for promotion is only "Merit". Mr. Mazumdar further submits that there are only 3 (three) officials in the feeder cadre including the applicant and the writ petitioner and since the zone of consideration is 1 : 4 hence, regardless of the OM dated 18/01/2023, all of them would be automatically considered for filling up the post of Chief Engineer, Water Resources Department, Assam, by way of promotion.

Mr. D.K. Das, learned counsel for the writ petitioner/opposite party no. 8 has, on the other hand, has strongly opposed the prayer made in the IA by submitting that at this stage, his client is unaware of the nature of proceeding before the DPC and, therefore, he is not in a position to respond to the submissions made by the applicant's counsel. According to Mr. Das, perusal of the minutes of the DPC would alone give his client a basis to figure out the nature of consideration made by the DPC and therefore, the interim order need not be vacated at this stage. Mr. Das has, however, not denied or disputed the fact that the criteria for promotion is "Merit" and that the applicant is retiring from service on 31/01/2023.

I have heard the submissions advanced by learned counsel for both the sides and have also gone through the materials available on record.

As noted above, the interim order dated 25/01/2023 was passed by this Court purely on account of the fact that the learned departmental counsel had sought time to obtain instruction and the counsel for the writ petitioner had urged that the DPC was likely to be held during the course of the day. It was under such circumstances, this Court was of the opinion that if an interim order is denied, the Writ Petition itself would become infructuous. However, today when the matter is called up, this Court has been appraised that even the writ petitioner has been considered by the DPC and the criteria for promotion is "Merit".

This Court also finds sufficient force in the submission of Mr. Mazumdar, learned AAG, that the

petitioner having been considered along with other eligible candidates, the impugned OM dated 18/01/2023 would not have any relevant bearing in this case *qua* the writ petitioner.

This Court is also conscious of the fact that the applicant is one of the candidates in the zone of consideration and he is due for retirement with effect from 31/01/2023. Therefore, there can be no doubt about the fact that if the interim order dated 25/01/2023 is continued in its present form, then in that event, there is a strong likelihood that it would cause irreparable injury to the interest of the applicant. Situated thus and considering the over all facts and circumstances of the case, this Court is of the opinion that the interim order passed on 25/01/2023 needs to be suitably modified.

It is, therefore, provided that the Department would be at liberty to notify the promotion of the selected candidate to the post of Chief Engineer, Water Resources Department, if so advised. Such notification, would however, be subject to further order that may be passed in the connected Writ Petition.

The learned departmental counsel is directed to produce the records of the selection process conducted by the DPC on the next date fixed in the Writ Petition i.e. 01/02/2023.

With the above observation, the order dated 25/01/2023 stands modified.

IA stands disposed of.

JUDGE

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Comparing Assistant